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NOTES

Transferring and Enjoining Suits Under the Federal Employers' Liability Act

THE VENUE provision¹ of the Federal Employers' Liability Act has been subjected to both judicial and Congressional modification since its enactment. Prior to its enactment, a plaintiff was often forced to bring suit in an inconvenient forum, since proper venue could only be laid in the state or federal district in which the defendant resided.² In many instances this required a plaintiff to travel long distances in order to maintain his action. The resultant inequity was clear. A heavy burden and expense in transportation of witnesses and evidence was imposed upon the injured party. The purpose of the special venue provision of the FELA, therefore, was to provide the plaintiff with a larger number of forums in which proper venue could be laid.

It appears evident from the Supreme Court cases and Congressional action following the enactment of the provision, however, that the balance

¹ "Under this chapter an action may be brought in a district court of the United States, in the district of the residence of defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several states, and no case arising under this chapter and brought in any state court of competent jurisdiction shall be removed to any court of the United States." 35 STAT. 66 (1908), as amended, 36 STAT. 291 (1910), 45 U.S.C. § 56 (1946).

² *Cound v. Archison*, T. & S.F. Ry., 173 Fed. 527 (W.D. Tex. 1909).

of the equities, theretofore strongly in favor of the defendant railroads, was shifted in favor of the plaintiff. It is the purpose of this article to review the action taken by Congress and the Supreme Court in order to evaluate the soundness of the present law on this subject.

In ordinary state actions, a defendant may assert the inequity of the plaintiff's choice of forum as a procedural defense. Those state courts in which the doctrine of *forum non conveniens* has been adopted can, in their discretion, dismiss the suit upon a finding that the cost of defending the action was unnecessarily burdensome, or that the plaintiff's choice of forum was made for the purpose of harassing the defendant.³ A second remedial measure is also available to a defendant. A court having in personam jurisdiction can, upon the same ground of oppressiveness, enjoin a plaintiff from continuing his action.⁴ By either of these methods the plaintiff who is seeking an advantageous bargaining position by attempting to force suit upon the defendant in an inconvenient forum can be restrained.⁵

Constitutional limitations restrict the exercise of these powers by a state court. The privileges and immunities clause of the Federal Constitution⁶ insures that a state will not refuse a non-citizen access to its courts in a case in which a citizen would have been allowed to bring suit.⁷

The Federal courts also early applied the equitable measures of injunction and *forum non conveniens* in cases in admiralty,⁸ and in 1947 the doctrine of *forum non conveniens* was applied in federal courts for the first time in an ordinary suit at law for damages. In *Gulf Oil Corp. v. Gilbert*,⁹ the Supreme Court held that since the federal district court of New York was justified in finding that an unreasonable burden would be placed upon the defendant by requiring him to defend the action in New York, that court did not err in dismissing the action. The reasoning of the court in this case appears sound; a defendant should not be compelled to sustain an undue financial burden by transporting witnesses and

³ *Collard v. Beach*, 81 N.Y. Supp. 619 (App. Div. 1st Dep't 1903).

⁴ *New York, C. & S.L. R.R. v. Matzinger*, 136 Ohio St. 271, 25 N.E.2d 349 (1940).

⁵ It is clear, however, that the courts require a substantial amount of evidence before affording the relief requested by a purportedly harassed defendant. "... Unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508, 67 Sup. Ct. 839, 843 (1947); accord, *Cox v. Pennsylvania R.R.*, 72 F. Supp. 278 (S.D. N.Y. 1947).

⁶ "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." U.S. CONST. Art. IV, § 2.

⁷ *Douglas v. New York, N.H. & H. R.R.*, 279 U.S. 377, 49 Sup. Ct. 355 (1929).

⁸ *Canada Malting Company, Ltd. v. Paterson Steamships, Ltd.*, 285 U.S. 413, 52 Sup. Ct. 413 (1932).

⁹ 330 U.S. 501, 67 Sup. Ct. 839 (1947).

records to a distant place of trial, or, in the alternative, to accept an undesirable settlement.

However, in federal statutory actions where a special venue provision had been prescribed, a federal court could not dismiss an action on the ground of *forum non conveniens*.¹⁰ Nor would an injunction lie against a plaintiff whose venue had been properly laid.¹¹ The FELA was included among this class of actions.

Early cases appeared to construe the FELA as conferring upon the plaintiff an *absolute* right to bring suit in any federal district or state in which the defendant resided or the accident occurred or in which the defendant was doing business at the time of commencement of the action. A defendant could therefore not contest the plaintiff's choice of forum on the ground that the burden and expense of defending the suit in this court heavily outweighed the advantage, if any, which was gained by the plaintiff in making his selection. In the case of *Baltimore & O. R.R. v. Kepner*,¹² the defendant, a resident of Ohio, brought suit in a federal district court of New York. The alleged wrong upon which the action was based occurred in Ohio. The Supreme Court of the United States affirmed a decision by the Supreme Court of Ohio that the plaintiff could not enjoin the FELA action in New York, on the ground that the defendant was privileged to bring suit in any court in which proper venue could be laid. The right conferred by the venue provision was said to be absolute. This same result was reached in *Miles v. Illinois Cent. R.R.*,¹³ in which the defendant in the FELA action sought to enjoin the plaintiff from bringing suit in a Tennessee state court.

The question of whether or not a state court could dismiss the suit on the ground that the plaintiff, by his choice of forum, was harassing the defendant, had not been clearly answered. In *Mondou v. New York, N. H. & H. R.R.*,¹⁴ the Supreme Court decided that a Connecticut court was not justified in dismissing an FELA action on the ground that it was against the public policy of the state and that it was inconvenient and confusing for that state to apply standards of right established by Congress which conflicted with the standards established by that state for the same class of actions. In refusing to allow Connecticut to dismiss on these grounds, the Supreme Court said: "We conclude that rights arising under the act in question may be enforced, *as of right*, in the courts of

¹⁰ *Connelly v. Central R.R.*, 238 Fed. 932 (S.D. New York 1916).

¹¹ *Miles v. Illinois Cent. R.R.*, 315 U.S. 698, 62 Sup. Ct. 827 (1942); *Baltimore & O. R.R. v. Kepner*, 314 U.S. 44, 62 Sup. Ct. 6 (1941); *Chesapeake & O. Ry. v. Vigor*, 90 F.2d 7 (6th Cir. 1937), *cert. denied*, 302 U.S. 705, 58 Sup. Ct. 25 (1937).

¹² 314 U.S. 44, 62 Sup. Ct. 6 (1941).

¹³ 315 U.S. 698, 62 Sup. Ct. 827 (1942).

¹⁴ 223 U.S. 1, 32 Sup. Ct. 169 (1912).

the states when their jurisdiction, as prescribed by local laws, is adequate to the occasion."¹⁵ This statement by the court was not given a uniform interpretation by the state courts, however, some holding that the prohibition against dismissal merely prevented discrimination by a state court against an action provided for by Congress,¹⁶ while others held that the *Mondon* case imposed an absolute prohibition, and hence the state court could not on any grounds dismiss an FELA action since it was obliged to hear the case regardless of the inequity of the plaintiff's choice of forum.¹⁷

Thus, although a defendant could resist the imposition of a burdensome forum in those cases not governed by the FELA or other statutes containing special venue provisions, he was required to defend a suit where there was a special venue provision regardless of the cost which would necessarily have to be incurred. The obvious result was that the plaintiff seeking a remedy for his injury was enabled to choose so inconvenient a forum as to force upon the defendant an inamicable settlement, or to bring suit in a forum traditionally accustomed to awarding high damages.¹⁸

Cognizant of these facts, Congress enacted the federal transfer statute.¹⁹ This statute gave to federal district courts the discretionary power to transfer any civil action, in the interests of justice and for the convenience of the parties, to any other district where it might have been brought. Although it was argued that the phrase "any civil action" did not include those actions for which special venue provisions had been prescribed, the Supreme Court, following the express language of the statute, held it to be applicable to such actions.²⁰

The effect of the transfer statute on this class of actions is illustrated by the case of *United States v. Nat. City Lines, Inc.*, which was brought to the Supreme Court both before²¹ and after²² passage of the statute. In

¹⁵ *Id.* at 59, 32 Sup. Ct. at 179. Italics added.

¹⁶ *Murnan v. Wabash Ry.*, 246 N.Y. 244, 158 N.E. 508 (1927).

¹⁷ *Leet v. Union P. R.R.*, 25 Cal.2d 605, 155 P.2d 42 (1944).

¹⁸ This practice of "shopping" for a forum became prevalent and was highly criticized. See Gay, *Bill to Curb "Shopping" for Forums is Urged*, 33 A.B.A.J. 659 (1947).

¹⁹ "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404 (a) (Supp. 1948).

²⁰ *U.S. v. Nat. City Lines, Inc.*, 337 U.S. 78, 69 Sup. Ct. 955 (1949); *Kilpatrick v. Texas & P. Ry.*, 337 U.S. 75, 69 Sup. Ct. 953 (1949); *Ex Parte Collett*, 337 U.S. 55, 69 Sup. Ct. 944 (1949); *accord*, *Hayes v. Chicago, R.I. & P. R.R.*, 79 F. Supp. 821 (D. Minn. 1948); *Nunn v. Chicago M., St. P. & P. R.R.*, 80 F. Supp. 745 (S.D. N.Y. 1948).

²¹ 334 U.S. 573, 68 Sup. Ct. 1169 (1948).

²² 337 U.S. 78, 69 Sup. Ct. 955 (1949).

this case suit was brought by the government to enjoin the alleged monopolistic practices of the defendant. Proper venue was laid in accordance with the provisions of the Clayton Act,²³ which are similar to those of the FELA and have been treated alike as special venue provisions. In its initial appearance before the district court for the southern district of California, the defendant filed a motion to dismiss on the ground that the selected forum was inconvenient and that the case could more easily be heard by a district court of Illinois. The trial court granted the motion and dismissed the action without prejudice to the government to institute suit in a more convenient forum. A direct appeal was made to the Supreme Court. As in the *Miles* and *Kepner* cases, the court held that the plaintiff was given a choice of forum as a matter of right, and that a defendant could not defeat this choice by a motion to dismiss on the ground that the selected forum was inconvenient, or that the plaintiff's choice was vexatious, oppressive or harassing. After the effective date of the transfer statute,²⁴ the defendant again filed a motion for transfer in the California district court on the same ground, and the motion was again granted by that court. On this appeal the Supreme Court affirmed the decision, holding that the transfer statute was applicable to antitrust suits and, by way of dictum, to actions brought under the FELA as well.

The view expressed in this dictum was confirmed by the Court in the later case of *Ex Parte Collett*.²⁵ This case was an action in mandamus and prohibition, in which the relator alleged that the Illinois court which effected the transfer of an FELA action had exceeded its authority and that the Kentucky court to which the action had been transferred had no jurisdiction to hear the case. The Supreme Court held that "any civil action" within the meaning of the statute included actions brought under the FELA, and that the district court had not exceeded its authority by transferring the suit.

Hence, whereas a defendant could not successfully effect a transfer to a more convenient forum under any circumstances in an action under the FELA prior to the enactment of the transfer statute, after its enactment the inequity of the imposition of a burdensome forum upon the defendant could be urged, and a federal district court was empowered to effect a transfer in its discretion.

The question as to whether a state court could dismiss an FELA suit on the ground of forum non conveniens when a part of its local law, here-

²³ "Any suit, action, or proceeding under the anti-trust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found." 38 STAT. 736 (1914), 15 U.S.C. § 22 (1946).

²⁴ Sept. 1, 1948.

tofore unsettled in view of the *Mondou* case,²⁶ was answered by the Supreme Court in *Missouri ex rel. Southern Ry. v. Mayfield*.²⁷ A Missouri trial court, considering themselves bound by the strong language of the *Miles* and *Kepner* cases, refused to dismiss an FELA action. On certiorari to the Supreme Court of the United States, it was held that the FELA had never imposed a restriction upon the application of the doctrine of forum non conveniens by a state court if the doctrine was a part of its local law. A state court could have dismissed a suit even prior to passage of the transfer statute, which is directed only to federal district courts, and of course could dismiss it after passage of the statute.

It should be emphasized at this point that the venue provision of the FELA still allows a plaintiff bringing suit thereunder to have a choice of forums in any state or federal district in which the defendant resides or is doing business or in which the cause of action arose. Because of the transfer statute, however, his choice is subject to the discretionary power of the court to transfer or dismiss the case in those instances where that choice of forum is vexatious, harassing, or oppressive to the defendant.

The closely allied question of whether a state court having in personam jurisdiction can enjoin the plaintiff from bringing suit in the court of a foreign jurisdiction on these grounds was raised recently in *Pope v. Atlantic Coast Line R.R.*²⁸ The plaintiff in this case sought to enjoin an action brought by the defendant under the FELA in an Alabama state court. The injunction proceeding was instituted in Georgia, where both plaintiff and defendant resided and where all events involved in the litigation had occurred. The Georgia trial court sustained the defendant's demurrer, and this ruling was reversed by the Supreme Court of Georgia. After granting certiorari, the Supreme Court of the United States reversed the Georgia Supreme Court, refusing to recognize the right of the Georgia court to grant the injunction, and holding that the venue provision of the FELA displaced the traditional power of state courts to enjoin their citizens from bringing suit in a forum which is oppressive to the defendant. The ground for the decision was the authority of the *Miles* and *Kepner* cases, which are admittedly indistinguishable from the *Pope* case.

The value of *Miles* and *Kepner* as controlling authority on this issue appears questionable in view of the Congressional action in enacting the transfer statute. The Revisor's Note to the transfer statute alludes to the *Kepner* case "as an example of the need for such a provision." Yet this

²⁶ 337 U.S. 55, 69 Sup. Ct. 944 (1949).

²⁷ See discussion on pp. 194-195 *supra*.

²⁸ 340 U.S. 1, 71 Sup. Ct. 1 (1950).

²⁹ 345 U.S. 379, 73 Sup. Ct. 749 (1953).

case is followed in apparent direct contradiction to the intent of the legislature. The majority dismissed this argument by concluding that the reference was made to the *Kepner* case only "... as an apt example of an inequitable situation which could be cured by providing the federal courts with the power to transfer an action on grounds of *forum non conveniens*."²⁹ As was pointed out, however, by Mr. Justice Frankfurter in a well reasoned dissenting opinion, "It is more than difficult to assume that Congress aimed at the result which this court reached in the *Collett* case, and at the same time desired the result of *Miles* and of *Kepner* to continue to be law."³⁰

The Court also stressed the failure of the Jennings Bill³¹ in the Senate Judiciary Committee after it had been passed by the House. This bill sought to deprive a plaintiff in an action under the FELA of some of those forums expressly provided by the venue provision of that Act, by limiting his choice to the place of injury or the state of his residence, provided, however, that if the defendant could not be served, the action could be brought in a jurisdiction in which the defendant was doing business at the time of commencement of the suit. Failure of the bill evidenced Congress' intent not to deprive a plaintiff of any of the forums provided by the FELA. It is submitted that a contrary decision in the *Pope* case would not have deprived a plaintiff of any of the forums provided by the FELA. Even if a defendant could enjoin a plaintiff from suing in a particular forum, the plaintiff could still have his choice of forums so long as that choice was reasonable and not made for the purpose of harassing the defendant.

Criticism of the *Pope* case and its effect on the general problems of venue in FELA cases appears to be forthcoming. In the recent case of *Coffey v. Louisville & N. R. Co.*,³² a case factually in line with those under discussion, a Kentucky court of appeals said:

Regardless of whether we think the reasoning in Mr. Justice Frankfurter's dissenting opinion expresses the sounder view, and regardless of what our independent views on the question might be, we feel constrained to follow the decision of the majority of the United States Supreme Court as expressed in the *Pope* case.³³

CONCLUSION

A plaintiff, if restricted by a narrow venue provision to such a degree as to compel him either to bring suit in an inconvenient forum or relinquish his right to redress, is concededly given only an inequitable choice.

²⁹ *Id.* at 385, 73 Sup. Ct. at 752.

³⁰ *Id.* at 390, 73 Sup. Ct. at 755.

³¹ H.R. 1639, 80th Cong., 1st Sess. (1947).

³² 258 S.W.2d 500 (Ky. 1953).

³³ *Id.* at 501.